



MODERNIZE ARCHAIC PASS-THROUGH LANGUAGE SUPPORT HB 5805

MRA is seeking a technical change that would modernize outdated statutory language that includes a rigid savings calculation that is not utilized. The current statutory language was enacted in the late 1970s to ensure pharmacies would pass along the “savings” – the difference in price – when substituting a generic drug for a brand name drug.

Our proposed amendment would modernize the language to reflect the current contractual payments system while ensuring that when a substitution is made, cash-paying customers receive the generic at the usual retail price for the generic.

The proposed language below is modeled after statutory language found in other states and uses existing statutory terms. This change allows for enough flexibility to cover all potential contractual agreements. The “no more than” language ensures discounts and coupons can be applied to further lower prices for consumers.

LEGISLATIVE ACTION NEEDED

Strike MCL 333.17755 (2) and replace it with the following:

(2) If a pharmacist substitutes a lower cost generically equivalent drug product or interchangeable biological drug product to a purchaser who is not submitting a claim to any third-party payment source, the pharmacist shall charge the purchaser not more than the current selling price for the lower cost product.

NO CONSUMER PROTECTION ISSUES WITH REMOVAL

Michigan's Attorney General's office has confirmed this statutory section—which was intended to mandate savings be passed along to the consumer—is obsolete given the current payments system and no harm will be caused to the consumer if the section is removed or modernized.

BACKGROUND

We do not believe the legislature ever intended the pass through provision to encode a rigid mathematical formula. Rather, it was intended to ensure that pharmacies did not reap windfall profits on the back of generic drugs, which were just emerging on the market.

The market has accomplished what the legislature intended, based on developments that the legislature could not have foreseen when they were considering the pass through provision. The market for prescription drugs in the late 1970s was very different than it is today. Then, health insurance including a prescription drug benefit was relatively new. Patients dealt directly with pharmacists, largely on a cash basis. Now, nearly all prescription drugs are covered by insurance, and the amounts pharmacies can charge are heavily negotiated in advance, often by extremely large and sophisticated insurance carriers and prescription benefit managers (PBMs).

Given the substantial changes to the healthcare system, insurance coverage, and technological advances it only makes sense to update and modernize the statute to reflect these practices.